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U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room
SA-19
2201 C St. NW
Washington, DC
20520
Re: Docket #State AR-01/96
Also submitted via electronic mail

Dear Secretary,

This letter contains our comments on the proposed regulations governing intercountry adoptions involving the United States or its citizens as required by the Intercountry Adoption Act of 2000.

As adoptive parents who suffered a great tragedy in our first attempt to adopt internationally, we have been involved in the process since the very first Acton Burnell meeting in April 2001. We are relieved at long last to see them reach the stage of review and commentary by the federal agency ultimately responsible for their implementation.

Naturally, there have been developments in the world of international adoption in the two years since Acton Burnell published its final draft. While we have been pleased with the incorporation of many of our suggested changes governing agency practices and required disclosures of information to prospective parents, and their retention in the draft recently published by DOS, subsequent events and ongoing conditions within the IA field have also brought to our attention further areas of concern which it would be within the scope of the regulations to address.

We will first make some general remarks, introducing ourselves, explaining our interest in this matter then move to discussions of specific regulations and how they can be amended.

INTRODUCTION

Our introduction to the world of the Hague Convention and international adoption reform came on the night of November 25, 1999, in a hotel room in the Russian city of Perm', when the infant boy who we were beginning to get used to as our first child suddenly and unexpectedly passed away, the victim of what we found out much later was a chronic infection that had begun in his urinary tract, raged untreated and eventually overwhelmed his tiny body.

Utterly devastated by this turn of events, we nevertheless continued with a second adoption through the same agency, Building Blocks Adoption Services of Medina, Ohio, of a Bulgarian boy. We were assured at that time by the agency director, Denise Hubbard, that that adoption would proceed smoothly and be completed within five months.

However, over the next two months it became apparent to us as we pursued a refund of our money, that misrepresentations, particularly of the Bulgarian adoption process, had been made to us by BBAS and Hubbard. We found out that others had had similar experiences, and following the example one of them had set we complained about our treatment to the Ohio Department of Human Services[1], which oversaw BBAS's license.

Owing to the overseas nature of much of what had occurred, and the fact that Ohio's regulations governing international adoption agencies primarily concerned paperwork and record-keeping requirements, there was little ODHS could do beyond some counseling at its site visit[2]. But BBAS could do a lot ... to us. Due to our suddenly adversarial relationship, we were told, all communications were to be routed through the agency's lawyer and we were frozen out by the agency, with crucial information not shared with us until the absolute last possible moment and our fellow clients discouraged from talking to us.

Delays mounted, but finally we brought our son home in October 2000, a period of time twice as long as we had been told it would take.

We chronicled our experience and those of many other fellow clients, plus other information about the agency we were able to learn, on the website www.BewareOfBBAS.org, which we fully incorporate within these comments by reference and urge anyone considering these regulations and the need for them who has not already read to do so.

In the two years since the last Acton Burnell meeting, much has happened within international adoption. Most of it is not good. Even with the impendency of the regulations, the field has gotten more corrupt, not less. Moratoria have been declared in Romania and Cambodia. Agencies in Florida and New Jersey have seen their licenses revoked in high-

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[1] Now renamed the Department of Job and Family Services.

[2] Only later did we learn that BBAS's response to our complaint contained false assertions concerning our adoption and documents we purportedly signed but, in fact, did not.

profile cases[3]. Some of that could be attributed to unscrupulous operators trying to wring the last few dollars out of this particular cash cow before it gets sent out to pasture, but not all.

So corrupt is international adoption now that we would refer to it as *corrupting*, in that it is impossible to do it honestly. We would not recommend that anyone go into the business no matter how noble their intentions, not if they wanted to succeed *and* keep their reputations for personal integrity and character intact. We do not say this merely rhetorically ... we have seen it happen more than once already.

There is truly a race to the bottom going on, and even prospective parents, once as much victims of these processes as the children, are now more and more brazenly acquiescing in the corruption, all in the name of the children they don't care how they got or how much money they have to spend just as long as they get them. Some even brag about this on Internet mailing lists.

At a time when recent events have made many Americans aware that antipathy to Americans generated by our actions abroad can have repercussions within our own borders, we can ill afford to tolerate any perpetuation by our own citizens of practices that would further tend to confirm that image in the public minds of foreign nations, such as tramping into barely-developed or developing countries with suitcases full of money equivalent to at least ten times what the average citizen makes in a year and the sort of complete disregard for the rule of law and judicial process that the U.S. government may well be upbraiding these fledgling democracies for. We can thus conceivably argue that bringing order and integrity to international adoption has national-security implications.

The regulations before us would go a long way toward this goal. We applaud especially their effort to effect change in the marketplace indirectly through three things: the requirement that state licensing agencies be accredited under Hague if the agencies they regulate wish to place children from other Convention countries; the liability insurance requirement and the information-disclosure provisions, the last two of which we were among those advocating strongly for.

But, in some areas, there is farther they can go.

For one thing, DOS needs to work closely with some of the state licensing boards to assure that, among other things, agencies that hold licenses in more than one state cannot simply move across state lines following adverse action and continue doing business, as one agency among others[4] has recently done. Some of those state boards are going to need a little help getting themselves up to the standards required of them for accreditation, and they are going to need some way of transmitting information between themselves to properly discharge the duties required of them by these regulations. Perhaps the regs can start to address that, and indeed the requirement of 96(4)(c) that public entities allowed to accredit may only do so in their own state or jurisdiction. If not, State should seek money from Congress for this. We cannot stress enough the importance of making this a reality. We do

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[3] Tedi Bear and A Child's Hope International, respectively.

[4] Tedi Bear, mentioned in the previous note, which began operating out of Georgia once its Florida license was lost.

not think anyone wants the situation to develop to the extent that it did with truck driving, where it was ultimately necessary to create a national license administered at the federal level to curb serious abuses of the system.

The drafters of the regulations should also do more to hold adoptive parents who try to game the system accountable for their misdeeds. These people are *not*, in a disturbingly growing number of cases, haplessly misled innocents, particularly those who have previously adopted. They have become savvy players themselves, unconcerned about the number of laws they circumvent or fellow adoptive parents they hurt just so long as they get that precious fifth or sixth adopted child. We have some suggestions that we believe will help, and we will share them at the appropriate places.

It is also important that the regulations acknowledge the adoption regulations and laws in effect in other countries. The convention is a transnational document that is meant to ensure that those who would traffic in children cannot elude prosecution by confining their traceable activities to countries where weak and corrupt judicial systems mean that they are unlikely to be punished or even investigated in the first place. By recognizing the importance and validity of alien laws and regulations in our own, we can more easily persuade them to reciprocate and thus bring about a situation where wrongdoers can more easily be brought to America to be tried[5], and the day that happens will be the day that international adoption becomes better not only for those children who are adopted, but most importantly from our perspective to those who would be their parents.

We also restate the importance of one particular principle above all: *transparency*. Far too many in the adoption field treat the whole process as if it were inherently shrouded in Wordsworthian clouds of glory. Well, Earth isn't heaven and those clouds become rather ignominious at ground level. Where the regulations can find a place for transparency, they should.

Now, we turn to specific regulations:

96.30(c)

This provision is essential, but enforcing it is going to require adequate and regular attention to the agency or provider's doings and records by the accrediting body.

96.31

I can't recall whether this is so or not, but I believe that during the first Acton Burnell meetings we seriously discussed whether or not the Convention or IAA requires that all agencies be non-profit.

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[5] And, of course, those who violate foreign laws from within American borders can, and should, be subject to sanction within those countries if warranted and likely to receive a fair trial.

In any event this stricture makes sense to us, and State should bear in mind that some other countries that have taken steps to regulate and accredit agencies, whether under Hague auspices or not, have explicitly required not only that American agencies have tax-exempt status under Section 501(c)(3) of the U.S. Tax Code but submit documentary proof of the same.

96.33(f)

This section should be more specific than to say "safeguards" and possibly suggest some, such as a separate non-profit to accept donations, a route many agencies have already taken[6].

96.33(h)

This provision is essential, in our opinion, to making these regulations work and as such should not be amended. Insurance agencies will, independently of government action, bring about many positive changes in at least how American agencies do their business. State should not be swayed by the many bleatings coming from various adoption agencies that this insurance is not available — if the government mandates, a market will have been created and some provider will step in to fill the need. What these agencies are crying foul about is that this might (no, will) lead to serious changes in how they conduct their business, changes they will not be the ones to have the final say over — a condition faced by practically every other American business involved in risking substantial sums of other people's money.

96.36

This section should also explicitly require that the agency or person makes sure that employees and agents are also aware of the prohibitions of the Foreign Corrupt Practices Act as enumerated at 15 U.S.C. 78-dd. The FCPA has been, to say the least, underutilized (which is to say not utilized at all) in the international adoption arena, an area which offers many richly deserving targets for it. We realize this is the responsibility of Justice rather than State, but one prosecution under that Act would have a major ripple effect throughout the industry.

96.38

Add:

(e) The agency or person shall require that employees sign, under penalty of perjury, a document attesting to their completion of the required training and provide such upon request of the accrediting agency at any time.

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[6] Of course, this practice has itself led to some possible abuses, as in some cases these non-profits share the same officers and addresses as the agency themselves yet their existence is unknown to the agency's clients.

96.39

We are glad to see language that, as far as we can tell, was originally proposed by us in this section. These required disclosures will become an effective tool in allowing adoptive parents to choose more knowledgably among agencies and through market discipline weed out the less scrupulous and/or competent providers, if parents make use of them.

To that end, we suggest a new subsection:

> *(g) The agency or person regularly includes as part of its communications to prospective clients upon initial contact a statement that all documents and information referred to in this section are available, as well as IRS Forms 990 and 1023 as required under the relevant sections of the Tax Code if the organization has 501(c)(3) status.*

We have found that information to also be of inestimable value in assessing the integrity of agencies providing international adoption services, even though they are not directly related to the aims of these regulations.

We also suggest, too, that (b)(1) include an additional requirement that criminal prosecutions against former clients for crimes committed against their adopted children within one year of the child joining their family. This would address what we feel to be a growing problem.

Since the Polreis case in the mid-1990s, there have been no less than *five* other such cases where parents have either been charged with or convicted of homicide, as well as another one in Ohio[7] where the adopted daughter was paralyzed for life. In all of them, the child had been home for less than a year. While certainly the parents in these cases who have been found guilty[8] are the only ones who deserve that opprobrium, responsibility as always encompasses a far wider circle than guilt. And we increasingly believe that these deaths occurred because severely disturbed children, possibly suffering from Reactive Attachment Disorder, were foisted unawares on parents who were completely unaware of these issues and unprepared to deal with them.

We hope there will not be any more. But we're not at all certain that there won't. In the meantime, requiring disclosure of these cases should they occur is probably the best guarantee of a market deterrent to agencies that are so desperate to move product that they place children with just anyone.

96.40(b)(6)

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[7] Using our former agency, Building Blocks, yet.

[8] It should be noted that, in the three instances where the case has been disposed, the adoptive parents charged have either been convicted or pled guilty.

This regulation *must* state explicitly that contributions, if any, are to be stated in fixed dollar amounts or ranges (Of course, we question the name. Money you are "expected or required" to pay isn't a contribution by any sense of the term), *not* percentages, unless explicitly required otherwise by the child's country of origin.

96.41(b)

Add "post-adoptive parent" to this list. Otherwise it could be read to exclude the many parents who, as we did not, wait until their adoptions are complete before making complaints to the appropriate authorities.

96.41(e)

As our experience among many others shows, this provision is absolutely necessary and should be retained.

96.46(b)

Amend to "a written agreement, *available to the accrediting body for review upon its request,* that ..." to promote greater transparency.

96.47(d)

Add, to the end, "as designated by that child's country of origin," for clarity and consistency's sake.

96.49(c)

This is another absolutely essential provision that has been made necessary by far too many instances.

96.49(i)

Add to the end "and that they were recorded or taken in full compliance with any applicable laws or regulations governing such in the child's country of origin." Some Convention or major sending countries have taken to barring such photography or videography, and while we think that's well-meaning in some cases but generally ill-advised (and not compatible with the kind of transparency that best serves all members of the adoption triad), those are the laws of sovereign nations and we best respect them and the intent of the Convention by avoiding the sort of situation that creates dubious legal loopholes for unscrupulous adoption providers in our own country.

96.50(g)(1)

Add "including the frequency and total number of such reports required, if so specified by the applicable laws or regulations of the child's country of origin." Without this, there is a possibility of parents getting bushwhacked by these requirements, as indeed some have by the agency failing to inform them about the requirements themselves.

96.59(a)

This passage is very crucial. It should make explicit in its language what is stated in the preamble to the regulations[9] — that the lack of either judicial or administrative review applies *only* to those organizations, entities, agencies, persons or providers that have *never* performed any placements (or not, they should add, in some time). As the Preamble states quite clearly, present providers would be experiencing the disruption of an ongoing business and economic loss; new providers would not. As much as some of those providers may deserve to be experiencing economic loss, they do have the right to legal action.

We say this because some adoption providers have been misrepresenting this provision in attempts to lobby against these regulations, hoping to gut them so that they will not have to face the sort of accountability and responsibility the adoption of children across international boundaries demands (as well as almost any other business endeavor). State must make this distinction clearer than it is here.

New providers *always* have the option of resorting to a direct appeal to the Secretary's office, per the provisions of Subpart L.

96.70(a)

Funding for the complaint registry *must* come from fees levied by the Secretary in whole or in part for this purpose. Agencies that would cut corners and fudge need some sort of regular reminder that someone's watching.

96.70(c)

How about just putting the whole complaint registry online?

96.72

Perhaps there should be a requirement that accrediting entities have on retainer an investigator or someone else familiar with the relevant laws, as well as Section 501(c) of the Tax Code?

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[9] *Federal Register*, Vol. 68, No. 178, p. 54087.

96.79

See comments for 96.75

96.96

We must be absolutely clear on this: *No extensions*. Period. We must avoid what happened in New Jersey, where A Child's Hope International's temporary certificate was regularly extended by the state beyond the one-year maximum, always (apparently) on the expectation that it would provide necessary paperwork or recordkeeping, when in fact such records were being stored unsecured and out of state, in further violation of such regulations. Only when David Bentley's connections to Internet pornography sites (not, granted, technically illegal) were splashed across the front page of the *Sunday Star-Ledger* did officials finally revoke ACHI's license.

Thus concludes our review of the specific regulations and comment thereon. We hope that State finds these comments to be useful and productive and look forward to seeing the process of implementing Hague continue.

If the reviewers have any questions, do not hesitate to contact us.

Sincerely,

Daniel and Elizabeth Case